

JUDGE ROSEN 08 CIV 6776.

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Attorneys for Plaintiffs Joseph Giordano  
And Brian Gordon, as Trustees

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

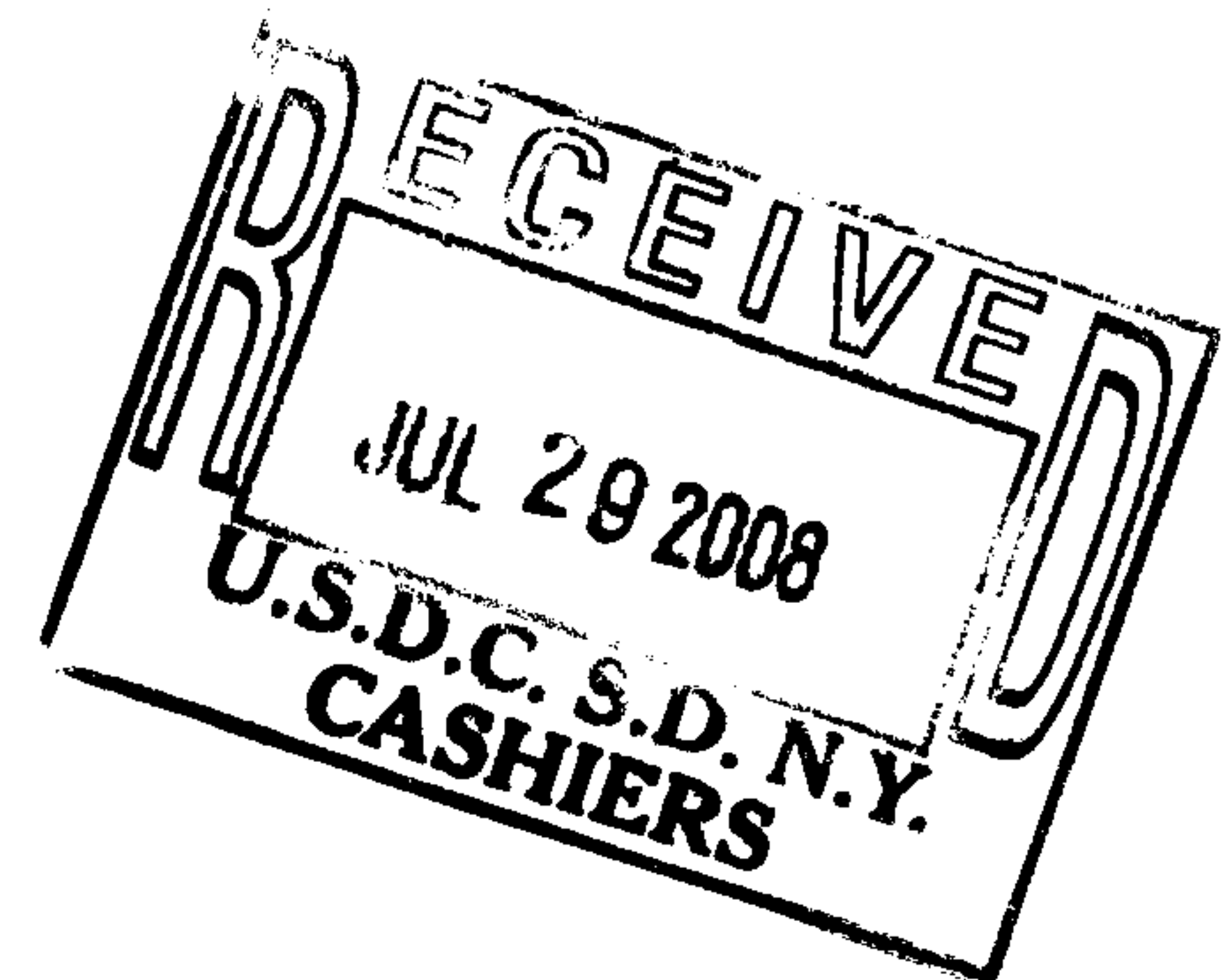
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JOSEPH GIORDANO and BRIAN GORDON,  
as Trustees of the Drywall Tapers Insurance  
Fund, Drywall Tapers Annuity Fund and  
Drywall Pension Fund,

Plaintiffs,

-against-

TNS MANAGEMENT SERVICES, INC.

Defendant.  
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COMPLAINT

Plaintiffs, by their attorneys, Lewis, Clifton & Nikolaidis, P.C., complaining of  
the defendant, allege as follows:

NATURE OF ACTION

1. This action is brought pursuant to Sections 502(a)(3) and 515 of the Employee Retirement Income Security Act of 1974 ("ERISA"), 29 U.S.C. §§ 1132(a)(3) and 1145. The action is brought by the trustees of three employee benefit plans to recover contributions due and owing to the plans under the terms of the plans and under the terms of the collective bargaining agreement to which defendant TNS Management, Inc. ("TNS" or "the Employer") is a party.

## JURISDICTION AND VENUE

2. The court has jurisdiction over this action pursuant to ERISA, Sections 502(a), (e)(1) and (f), 29 U.S.C. §§ 1132(a), (e)(1) and (f). Venue in the Southern District of New York is proper pursuant to ERISA, Section 502(e)(2), 29 U.S.C. § 1132(e)(2), since the plaintiff employee benefit plans are located within the County of New York.

## PARTIES

3. Joseph Giordano and Brian Gordon are trustees of the Drywall Tapers Insurance Fund, Drywall Tapers Annuity Fund and Drywall Pension Fund (collectively, the “Funds”), all of which are “employee benefit plans” within the meaning of ERISA, Section 3(3), 29 U.S.C. § 1002(3). Each of the Funds maintains its principal place of business at 265 W. 14<sup>th</sup> Street, New York, New York.

4. Each of the Funds is a “multi-employer plan” within the meaning of ERISA, Section 3(37), 29 U.S.C. § 1002(37).

5. Plaintiffs Giordano and Gordon are “fiduciaries” of the plans within the meaning of ERISA, Section 3(21), 29 U.S.C. § 1002(21).

6. On information and belief, defendant TNS is corporation which was incorporated in the State of New York, and its principal place of business is located at 64-55 74<sup>th</sup> Avenue, Glendale, New York. Defendant is an “employer” within the meaning of ERISA, Section 3(5), 29 U.S.C. § 1002(5).

## FACTUAL ALLEGATIONS

7. At all times relevant hereto, defendant TNS has been a party to, and bound by, a collective bargaining agreement (“Trade Agreement”) which it



negotiated with Drywall Tapers and Pointers of Greater New York, Local Union 1974, IUPAT, AFL-CIO (“Local 1974” or “the Union”).

8. The Trade Agreement provides that the Employer agrees to be bound by the trust agreements establishing each of the Funds (“Trust Agreements”).

9. Pursuant to the terms of both the Trade Agreement and the Trust Agreements, defendant is obligated to make contributions to the Funds on behalf of its employees. The specific amounts of the contributions required to be made to each of the Funds are set forth in the Trade Agreement.

11. From January 1, 2005 through March 31, 2006, defendant failed and refused to remit all of the contributions due to the Funds under the terms of the Trade Agreement, despite requests by representatives of the Funds that it do so.

12. On information and belief, the contributions owed by TNS to the Funds for the period of January 1, 2005 through March 31, 2006 amount to \$12,159.00.

13. Defendant’s failure and refusal to make the required contributions to the Funds constitutes a violation of ERISA and a breach of both the Trade Agreement and Trust Agreements.

WHEREFORE, plaintiffs demand judgment against defendant, granting plaintiffs:

- a) The sum of \$12,159.00 in contributions owed to the Funds;
- b) Interest on the unpaid contributions pursuant to 29 U.S.C. § 1132(g)(2)(B) and the terms of the plans;
- c) Liquidated damages equal to 20% of the contributions determined to be owed to the Funds pursuant to 29 U.S.C. § 1132(g)(2)(c)(ii) and the terms of the plans;

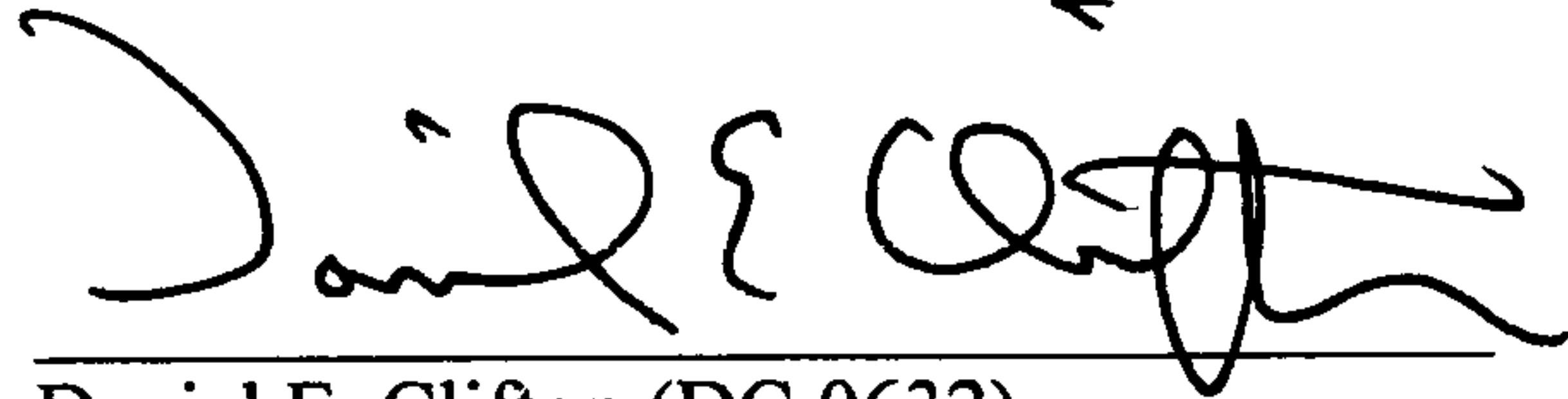
d) Attorney's fees and costs pursuant to 29 U.S.C. § 1132(g)(2)(D) and the terms of the plans; and

e) Such other and further relief as the court may deem just and proper.

Dated: July 29, 2008  
New York, New York

LEWIS, CLIFTON & NIKOLAIDIS, P.C.

By:

A handwritten signature in black ink, appearing to read "Daniel E. Clifton", written over a horizontal line.

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Attorneys for plaintiffs Joseph Giordano and  
Brian Gordon, as Trustees of the Drywall  
Tapers Insurance Fund, Drywall Tapers  
Annuity Fund and Drywall Pension Fund